

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BEN UPTON,  
Plaintiff,

v.

Case Number: 08-13995  
Honorable Julian Abele Cook, Jr.

CITY OF ROYAL OAK, JIM ELLISON, MAYOR  
OF THE CITY OF ROYAL OAK, TOM HOOVER,  
CITY MANAGER FOR THE CITY OF ROYAL OAK,  
MARY JO DIPAOLO, DIRECTOR OF HUMAN  
RESOURCES, and C. BRIAN JAMES, FORMER  
ASST. CITY ATTORNEY FOR THE CITY OF ROYAL  
OAK, Jointly and Severally,

Defendants.

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ORDER

On September 22, 2010, this Court granted the motion for summary judgment that had been filed by the Defendants, City of Royal Oak et al, after concluding that no genuine issues of a material fact relating to any of the substantive issues in controversy herein had been established by the Plaintiff, Ben Upton. In particular, the Court found that Upton had failed to support his claim that (1) his First Amendment rights had been violated, and (2) he had been deprived of his fundamental due process rights under the United States Constitution. This Court had also concluded that (1) the individual Defendants were not entitled to qualified immunity with respect to Upton's First and Fourteenth Amendment claims, (2) Upton had failed to proffer the essential elements of a civil conspiracy, and (3) the Defendant, City of Royal Oak, was not liable under 42 U.S.C. § 1983. Shortly thereafter (October 5, 2010), Upton filed an appeal to the Sixth Circuit.

On May 11, 2012, the Sixth Circuit rendered an opinion that affirmed the order of this Court regarding Upton's due process, civil conspiracy, and municipal liability claims. However, the Sixth Circuit disagreed with the conclusions of this Court with respect to Upton's First Amendment claim, and the grant of qualified immunity to the individual Defendants.

Accordingly, the earlier decisions by this Court of September 22, 2010, which pertain to the grant of summary judgment regarding (1) Upton's First Amendment retaliation claim, and (2) the grant of immunity in favor of the individual Defendants, are set aside and vacated.

IT IS SO ORDERED.

Date: May 22, 2012

s/Julian Abele Cook, Jr.  
JULIAN ABELE COOK, JR.  
U.S. District Court Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail to the non-ECF participants on May 22, 2012.

s/ Kay Doaks  
Case Manager